(97)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.1713 OF 2003

PETITIONER Manoj Kumar, aged about 39 years, son of Shri Shrawan Kumar Gupta, Paras Complex, Opposite State Bank of India, Gurudwara Road, Distt. Durg (Chhattisgarh)

versus

RESPONDENTS

1. Union of India, through : General Manager, South Eastern Railway, Garden Reach, Kolkata (West Bengal)
2. Divisional Manager, South Eastern Railway, Divisional Office, Bilaspur (CG)
3. Senior Divisional Commercial Manager, SECR, South Eastern Railway, Bilaspur (C.G.)
4. Station Master, South Eastern Railway, Distt. Durg (Chhattisgarh)

Present : Mr. Saurabh Jaiswal, learned counsel for the petitioner.
Mr. Vinay Harit, learned Senior Counsel with Mr. Narayan Shrivastava, learned counsel on behalf of the Railways.

ORAL ORDER
(Passed on 13th February, 2006)

The petitioner is a graduate unemployed youth and a permanent resident of Durg District. He applied to the Railway Administration for grant of licence to function as Railway Traveling Service Agent. In response to his application, he was granted licence to function as Railway Traveling Service Agent for a period of 3 years commencing from 3-12-1999 and ending 2-12-2002. Well before the expiry of term of licence, the petitioner made an application to the Senior Divisional Commercial Manager for renewal of the licence for a further period of 3

years from 3-12-2002 to 2-12-2005. Then, came the impugned endorsement dated 26-11-2002 marked as Annexure P-1. It reads as follows : -

"SOUTH EASTERN RAILWAY

No.COM./TC/RTSA/96/PT.II/02

Office of the
Sr. Divisional Manager
Bilaspur Division 26.11.2002

To,

Sri Manoj Kumar,
Paras Complex,
Opp : SBI,
Gurudwara Road,
DURG (CG).

Reg : Rail Travel Service Agent, Durg.
Ref : 1) Your letter No.NIL dated NIL.
2) This office letter of even no. dated 25.11.02.

Dear Sir,

With reference to the above, it is to inform you that your application for renewal of RTSA has been examined. As the Railway Administration has already called for fresh applications for awarding license for RTSA at Durg, your request can not be considered for renewal of RTSA license after expiry of tenure/period i.e. 02.12.2002.

Thanking you,

Yours sincerely,

Sd/
Sr. Divl. Comml. Manager
Bilaspur

Copy to : Chief Station Manager, Durg for information & necessary action.

Copy to : Chief Reservation Supervisor / Durg for information & necessary action.

Copy to : Chief Commercial Inspector / Durg for information & necessary action.

Sd/
Sr. Divl. Comml. Manager
Bilaspur"

The petitioner, being aggrieved by the above endorsement issued by the Senior Divisional Commercial Manager, the third respondent herein, has preferred this writ petition for intervention of the Court.

2. I heard learned counsel for the parties. Learned counsel for the petitioner, drawing my attention to Rule 7 of the Rules made by the Central Government in exercise of the powers conferred by Clause (g) of sub-Section (1) of Section 47 of the Indian Railways Act, 1890, would contend that the third respondent ought to have renewed the licence as per the petitioner's request and the reason stated in the impugned endorsement not to renew the licence is totally irrelevant and could not be sustained in law. Learned Senior Counsel on behalf of the respondents – Railways, *per contra*, would support the impugned endorsement.

3. Having heard the learned counsel for the parties, I find an error apparent on the face of the impugned endorsement. The reason stated by the third respondent not to renew the licence in favour of the petitioner is totally irrelevant and extraneous to the decision-making in terms of Rule 7 of the Rules. Rule 7 reads as follows :-

> "7. **Renewal of licence.** – A licence shall, unless the competent authority for reasons to be recorded in writing otherwise decides in any case be renewable for three years and shall be so renewable from time to time and the provisions of rule 4 shall apply to the renewal of the licence as they apply to the grant thereof."

The language employed in Rule 7 is plain, clear and unambiguous and it does not admit of more than one meaning. The only meaning of Rule 7 is that a licence had to be renewed for 3 years and shall be so renewable from time to time unless the competent authority, the third respondent in this case, for reasons to be recorded in writing otherwise decided not to renew the licence. It is not the case of the third respondent that on receipt of the application from the petitioner for renewal of licence, he applied his mind to the request of the petitioner and for some weighty and substantial grounds or reasons, he decided not to renew the licence and recorded reasons in that regard in writing. On the other hand, the impugned endorsement speaks for itself as to what the third respondent did after he received the application of the petitioner for renewal of licence. At this stage itself, it needs to be noticed that the impugned endorsement was issued even before the term of the earlier licence came to an end on 2-12-2002. The impugned endorsement would, in unmistakable terms, tell that the application of the petitioner for renewal of licence was not considered for the simple and only reason that the Railway Administration had already called for fresh applications for awarding licence for Railway Traveling Service Agent. It is needless to state that in issuing the impugned endorsement, the third respondent has flouted the mandate of Rule 7 of the Rules. In the first place, the third respondent ought not to have called for fresh applications for awarding licence in place of the licence earlier

granted to the petitioner even before the term of licence expired. Secondly, on the face of the provisions of Rule 7, the third respondent ought not to have called for fresh applications before taking a decision not to renew the licence in favour of the petitioner. Looking from either way, the impugned endorsement, should I say, is *ex facie* illegal and violative of the statutory Rule 7.

4. The contention of Mr. Vinay Harit, learned Senior Counsel on behalf of the Railways that though under Rule 7, the petitioner was entitled to seek renewal of licence, he had to comply with the requirements of Rule 4 of the Rules and since he did not comply with Rule 4 prescriptions, he is not entitled to renewal of licence. There is no need for this Court to meet the above contention of learned Senior Counsel on behalf of the Railways except to note down what the Apex Court observed in para 8 of the judgment in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**[1]. It reads as under : -

> "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18) :
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> "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect

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1. AIR 1978 SC 851 (at para 8)

> the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself"."

The impugned endorsement does not disclose that the application made by the petitioner for renewal of the licence was rejected on the ground now urged before the Court, that is to say, the petitioner did not comply with the requirements of Rule 4 of the Rules.

5. In the result and for the foregoing reasons, the writ petition is allowed with costs quantified at Rs.3,000/- (Rupees Three Thousand) payable within two weeks. A direction shall issue to the respondents to consider the application of the petitioner for renewal of licence to act as Railway Traveling Service Agent, strictly in accordance with law and keeping in mind the provisions of Rule 7 and pass appropriate order within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Chief Justice

Gopal